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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 696 (PAE)

5 ARI TEMAN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.
9 January 28, 2020
9:00 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 KEDAR S. BHATIA

EDWARD A. IMPERATORE

18 Assistant United States Attorneys

19 JOSEPH A. DIRUZZO, III

JUSTIN GELFAND

20 Attorneys for Defendant

21 ALSO PRESENT: DANIEL ALESSANDRINO, NYPD

WILLIAM MAGLIOCCO, Paralegal, USAO

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(Trial resumed; jury not present)

THE COURT: Good morning everyone. All counsel is present but Mr. Teman is not.

MR. GELFAND: I think he might be going through security. I was in touch with him. Obviously he is aware of the time and has not responded to his phone, so I can't comment to anything I don't know other than he is not here and not responding, so when we went through security this morning the line was really lengthy. We waive his appearance.

THE COURT: I only have housekeeping to take up. From my perspective I have marked the following as court exhibits: Court Exhibit 2 will be the final version of the charge. Court Exhibit 3 will be the witness list that counsel have approved. Court Exhibit 4 is the exhibit list that counsel have prepared and approved. Court Exhibit 5 is the indictment with one important change: Counsel, you included the back page which included Section 1028(a). That's no longer in the case. The back page also reflected -- good morning, Mr. Teman -- the superseder return date. My judgment is they didn't need to know that, so I simply tore off the back page which is after the signature of the foreperson. It's really just the back. I assume that's fine with everybody.

MR. BHATIA: That's fine.

MR. GELFAND: Yes, your Honor.

THE COURT: Court Exhibit 6 is the verdict form. And

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1 Court Exhibit 7 is the PowerPoint that the government used in
2 summation. Put aside the PowerPoint, the other items will be
3 going to the jury today. And we have prepared a substantial
4 care package of 12 of each of them -- the charge, the witness
5 list, the exhibit list, the indictment and the verdict form --
6 so when the time comes Mr. Smallman will be giving that to the
7 jury as its care package.

8 With that, I've got nothing else to take up with you
9 today, but I wanted to give counsel an opportunity -- in the
10 event overnight something has arisen -- to raise any issue.
11 Government?

12 MR. BHATIA: Nothing from the government.

13 THE COURT: Defense?

14 MR. GELFAND: No, your Honor.

15 THE COURT: So, today once the jury has begun to
16 deliberate, I will need somebody from each table to be here.
17 And you should be in a position to be in touch with the balance
18 of your team, prosecution or defense. I would urge you at the
19 beginning to stick around. We will likely get a note
20 identifying who the foreperson is but, if experience teaches me
21 anything, it's within 30 or 45 minutes there is a high
22 likelihood of a note just asking for materials, using the
23 exhibit list as a menu. So, I would like to be able to be
24 quick on the uptake as to that. But the important thing is
25 during the course of the day I need somebody here and in a

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1 position to respond from each team. OK. Anything else before
2 we adjourn until 9:30?

3 MR. GELFAND: Not for the defense.

4 MR. BHATIA: Nothing.

5 THE COURT: I will see you at 9:30. Thank you.

6 (Recess)

7 THE COURT: Mr. Smallman, let's bring in the jury.

8 (Jury present)

9 THE COURT: Good morning, ladies and gentlemen.

10 Please be seated.

11 I am about to read to you my instructions to guide you
12 in your deliberations, and as you will hear in a moment, you're
13 going to have a copy of these for you to use as you
14 deliberate.

15 Members of the jury, you have now heard all of the
16 evidence in the case as well as the final arguments of the
17 parties. You have paid careful attention to the evidence, and
18 I am confident that you will act together with fairness and
19 impartiality to reach a just verdict in the case.

20 Now it's time for me to instruct you as to the law
21 that governs this case. There are three parts to these
22 instructions. First, I'm going to give you some general
23 instructions about your role, and about how you are to decide
24 the facts of this case. Those instructions really would apply
25 to just about any trial. Second, I'm going to give you some

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1 specific instructions about the legal rules applicable to this
2 particular case. Third, I will give you some final and brief
3 instructions about procedure.

4 Listening to these instructions may not be easy. It's
5 important, however, that you listen carefully and concentrate.
6 I ask you for patient cooperation and attention. You will
7 notice I am reading these words from a prepared text. It would
8 be more lively, no doubt, if I just improvised, but it's
9 important that I not do so. The law is made up of words, and
10 those words are very carefully chosen, and so when I tell you
11 the law, it's critical that I use exactly the right words.

12 You will have copies of what I'm reading in the jury
13 room to consult. Don't worry if you miss a word or two. For
14 now just listen carefully and try to concentrate on what I'm
15 saying.

16 First of all, as to the role of the Court: I have
17 instructed you during the trial as to various matters, and you
18 should of course continue to follow those instructions. My
19 duty at this point is to instruct you as to the law. It's your
20 duty to accept these instructions of law and to apply them to
21 the facts as you determine them. With respect to legal
22 matters, you must take the law as I give it to you. If any
23 attorney has stated a legal principle different from any that I
24 state to you in my instructions, it is my instructions that you
25 must follow. You must not substitute your own notions or

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1 opinions of what the law is or ought to be.

2 As to the role of the jury: As members of the jury,
3 you are the sole and exclusive judges of the facts. You pass
4 upon the evidence. You determine the credibility of the
5 witnesses. You resolve such conflicts as there are or may be
6 in the testimony. You draw whatever reasonable inferences you
7 decide to draw from the facts as you have determined them, and
8 you determine the weight of the evidence.

9 Do not conclude from any of my questions or any of my
10 rulings on objections or anything else that I have done during
11 this trial that I have any view as to the credibility of the
12 witnesses or how you should decide the case.

13 It is your sworn duty, and you have taken the oath as
14 jurors, to determine the facts. Any opinion I might have
15 regarding the facts is of absolutely no consequence.

16 As to the role of counsel: It's the duty of the
17 attorneys to object when the other side offers testimony or
18 other evidence that the attorney believes is not properly
19 admissible. It's my job to rule on those objections.
20 Therefore, why an objection was made or why I ruled on it the
21 way I did is not your business. You should draw no inference
22 from the fact that an attorney objects to any evidence. Nor
23 should you draw any inference from the fact that I might have
24 sustained or overruled an objection.

25 The personalities and the conduct of counsel in the

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1 courtroom are not in any way at issue. If you formed reactions
2 of any kind to any of the lawyers in the case, favorable or
3 unfavorable, whether you approved or disapproved of their
4 behavior as advocates, those reactions should not enter into
5 your deliberations.

6 From time to time, as you know, the lawyers and I had
7 conferences out of your hearing. Those conferences involved
8 procedural and other matters, and none of the events relating
9 to those conferences should enter into your deliberations at
10 all.

11 Sympathy or Bias: Under your oath as jurors, you are
12 not to be swayed by sympathy or prejudice. You are to be
13 guided solely by the evidence in this case, and the crucial,
14 bottom-line question that you must ask yourselves as you sift
15 through the evidence is: Has the government proven the guilt
16 of the defendant beyond a reasonable doubt?

17 It is for you alone to decide whether the government
18 has proven that the defendant is guilty of the crimes charged.
19 You must decide solely on the basis of the evidence presented,
20 subject to the law as I explain it to you. It must be clear to
21 you that once you let fear or prejudice, or bias or sympathy
22 interfere with your thinking, there is a risk that you will not
23 arrive at a true and just verdict.

24 If you have a reasonable doubt as to the defendant's
25 guilt, you should not hesitate for any reason to find a verdict

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1 of acquittal for the defendant. But on the other hand, if you
2 should find that the government has met its burden of proving
3 the defendant's guilt beyond a reasonable doubt, you should not
4 hesitate because of sympathy or any other reason to render a
5 verdict of guilty for the defendant.

6 The question of possible punishment of the defendant
7 is of no concern to the jury and should not enter into or
8 influence your deliberations. The duty of imposing sentence
9 rests exclusively upon the Court. Your function is to weigh
10 the evidence in the case and to determine whether or not the
11 defendant is guilty beyond a reasonable doubt, solely upon the
12 basis of such evidence. Under your oath as jurors, you cannot
13 allow a consideration of the punishment which may be imposed
14 upon the defendant, if he is convicted, to influence your
15 verdict, in any way, or, in any sense, enter into your
16 deliberations.

17 Similarly, it would be improper for you to allow any
18 feelings that you might have about the nature of the crime
19 charged to interfere with your decision-making process. Your
20 verdict must be based exclusively upon the evidence or the lack
21 of evidence in the case.

22 In reaching your verdict, you must remember that all
23 parties stand equal before a jury in the courts of the United
24 States. The fact that the government is a party and the
25 prosecution is brought in the name of the United States does

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1 not entitle the government or its witnesses to any greater
2 consideration than that accorded to any other party. By the
3 same token, you must give it no less deference. The government
4 and the defendant stand on equal footing before you.

5 It would be improper for you to consider, in reaching
6 your decision as to whether the government sustained its burden
7 of proof, any personal feelings you may have about the
8 defendant's race, national origin, sex, or age. Again, all
9 persons are entitled to the same presumption of innocence, and
10 the government has the same burden of proof with respect to all
11 persons. Your verdict must be based solely on the evidence or
12 the lack of evidence.

13 Now, I will instruct you on the presumption of
14 innocence -- the government's burden of proof in this case.
15 The defendant has pled not guilty. By doing so, he denies the
16 charges in the indictment. Thus, the government has the burden
17 of proving the charges against him beyond a reasonable doubt.
18 A defendant does not have to prove his innocence. On the
19 contrary, he is presumed to be innocent of the charges
20 contained in the indictment. This presumption of innocence was
21 in the defendant's favor at the start of the trial, it
22 continued in his favor throughout the entire trial, it is in
23 his favor even as I instruct you now, and it continues in his
24 favor during the course of your deliberations in the jury room.

25 It is removed if and only if you, as members of the

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1 jury, are satisfied that the government has sustained its
2 burden of proving the guilt of the defendant beyond a
3 reasonable doubt.

4 So, the question that naturally comes up is: What is
5 a reasonable doubt? The words almost define themselves. It is
6 a doubt founded in reason and arising out of the evidence in
7 the case, or the lack of evidence. It is doubt that a
8 reasonable person has after carefully weighing all the
9 evidence. Reasonable doubt is a doubt that appeals to your
10 reason, your judgment, your experience, your common sense.
11 Reasonable doubt does not mean beyond all possible doubt. It
12 is practically impossible for a person to be absolutely and
13 completely convinced of any disputed fact which by its nature
14 is not susceptible to mathematical certainty. In consequence,
15 the law in a criminal case is that it is sufficient if the
16 guilt of the defendant is established beyond a reasonable
17 doubt, not beyond all possible doubt.

18 If, after a fair and impartial consideration of all of
19 the evidence, you are not satisfied of the guilt of the
20 defendant, and if you do not have an abiding conviction of the
21 defendant's guilt -- in sum, if you have such a doubt as would
22 cause you, as prudent persons, to hesitate before acting in
23 matters of importance to yourselves -- then you have a
24 reasonable doubt, and in that circumstance it is your duty to
25 acquit the defendant.

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1 On the other hand, if after a fair and impartial
2 consideration of all of the evidence, you do have an abiding
3 belief of the defendant's guilt -- such a belief as you would
4 be willing to act upon without hesitation in important matters
5 in the personal affairs of your own life -- then you have no
6 reasonable doubt, and under such circumstances it is your duty
7 to convict the defendant.

8 The government is not required to prove the essential
9 elements of an offense by any particular number of witnesses.
10 The testimony of a single witness may be sufficient to convince
11 you beyond a reasonable doubt of the existence of the essential
12 elements of the offense you are considering if you believe that
13 the witness has truthfully and accurately related what he or
14 she has told you.

15 In determining the facts, you must rely upon your own
16 recollection of the evidence. The evidence in this case is the
17 sworn testimony of witnesses, the exhibits received into
18 evidence, and the stipulations of the parties.

19 However, testimony that I have stricken or excluded or
20 told you to disregard is not evidence and may not be considered
21 by you in rendering your verdict. Also, if certain testimony
22 was received for a limited purpose, you must follow the
23 limiting instructions I have given and use the evidence only
24 for the purpose or purposes that I indicated.

25 The only exhibits that are evidence in this case are

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1 those that were received into evidence. Exhibits marked for
2 identification but not admitted are not evidence, nor are
3 materials that were used only to refresh a witness's
4 recollection.

5 As I told you at the start of the case, statements and
6 arguments by lawyers are not evidence, because the lawyers are
7 not witnesses. What they have said to you in their opening
8 statements and in their summations is intended to help you
9 understand the evidence to reach your verdict. However, if
10 your recollection of the facts differs from the lawyers'
11 statements, it is your recollection that controls.

12 For the same reasons, you are not to consider a
13 lawyer's questions as evidence. It is the witnesses' answers
14 that are the evidence, not the lawyers' questions.

15 Finally, any statements that I may have made do not
16 constitute evidence. It is for you alone to decide the weight,
17 if any, to be given to the testimony you have heard and the
18 exhibits you have seen.

19 Generally, as I mentioned at the start of the case,
20 there are two types of evidence that you may consider in
21 reaching your verdict. One type of evidence is direct
22 evidence. Direct evidence is testimony by a witness about
23 something he knows by virtue of his own senses -- something he
24 has seen, felt, touched, or heard. For example, if a witness
25 testified that when he left his house this morning it was

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1 raining, that would be direct evidence about the weather.

2 Circumstantial evidence is evidence from which you may
3 infer the existence of certain facts. To use the example I
4 used last Wednesday when we got started at the start of the
5 trial, assume again that when you came into the courthouse this
6 morning the sun was shining and it was a nice day. Assume that
7 the courtroom blinds were drawn and you couldn't look outside.
8 And assume that as you were sitting here, someone walked in
9 with an umbrella that was dripping wet, and then someone else a
10 few minutes later entered with a wet raincoat. Now, you can't
11 look outside the courtroom, and you can't see whether or not
12 it's raining, and so you wouldn't have any direct evidence of
13 that fact, but on the combination of facts that I have asked
14 you to assume, it would be reasonable and logical for you to
15 conclude that it had been raining.

16 That is all there is to circumstantial evidence. You
17 infer on the basis of reason and experience and common sense
18 from one established fact the existence or the nonexistence of
19 some other fact.

20 As you can see, the matter of drawing inferences from
21 facts in evidence is not a matter of guesswork or speculation.
22 An inference is a logical, factual conclusion that you might
23 reasonably draw from other facts that have been proven. Many
24 material facts -- such as what I person was thinking or
25 intending -- can rarely be proved by direct evidence.

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1 Circumstantial evidence is as valuable as direct
2 evidence. The law makes no distinction between direct and
3 circumstantial evidence, but simply requires that before
4 convicting a defendant, the jury must be satisfied of a
5 defendant's guilt beyond a reasonable doubt, based on all of
6 the evidence in the case, circumstantial and direct.

7 There are times when different inferences might be
8 drawn from the evidence. The government asks you to draw one
9 set of inferences. The defendant asks you to draw another.
10 Again, it's for you, and you alone, to decide what inferences
11 you will draw.

12 Let's turn now to witness credibility. You have had
13 the opportunity to observe the witnesses. It is now your job
14 to decide how believable each witness was in his or her
15 testimony. You are the sole judges of the credibility of each
16 witness and of the importance of his or her testimony.

17 You should carefully scrutinize all of the testimony
18 of each witness, the circumstances under which the witness
19 testified, the impression the witness made when testifying, the
20 relationship of the witness to the controversy and the parties,
21 the witness's bias or impartiality, the reasonableness of the
22 witness's statement, the strength or weakness of the witness's
23 recollection when viewed in the light of all of the other
24 testimony, and any other matter in evidence that may help you
25 decide the truth and the importance of each witness's

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1 testimony.

2 In other words, what you must try to do in deciding
3 credibility is to size a witness up in light of his or her
4 demeanor, the explanations given, and all of the other evidence
5 in the case. You should use your common sense, your good
6 judgment, and your everyday experiences in life to make your
7 credibility determinations.

8 In passing upon the credibility of a witness, you may
9 also take into account any inconsistencies or contradictions as
10 to material matters in his or her testimony.

11 If you find that any witness has willfully testified
12 falsely as to any material fact, you have the right to reject
13 the testimony of that witness in its entirety. On the other
14 hand, even if you find that a witness has testified falsely
15 about one matter, you may reject as false that portion of his
16 or her testimony and accept as true any other portion of the
17 testimony which commends itself to your belief or which you may
18 find corroborated by other evidence in the case. A witness may
19 be inaccurate, contradictory, or even untruthful in some
20 aspects, and yet be truthful and entirely credible in other
21 aspects of his or her testimony.

22 The ultimate question for you to decide in passing
23 upon credibility is: Did the witness tell the truth before
24 you? It is for you to say whether his or her testimony at this
25 trial is truthful in whole or in part.

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1 Now a discussion of witness bias. In deciding whether
2 to believe a witness, you should specifically note any evidence
3 of hostility or affection that the witness may have towards one
4 of the parties. Likewise, you should consider evidence of any
5 interest or motive that the witness may have in cooperating
6 with a particular party. You should also take into account any
7 evidence of any benefit that a witness may receive from the
8 outcome of the case.

9 It is your duty to consider whether the witness has
10 permitted any such bias or interest to color his or her
11 testimony. In short, if you find that a witness is biased, you
12 should view his or her testimony with caution, weigh it with
13 care, and subject it to close and searching scrutiny.

14 Of course, the mere fact that a witness is interested
15 in the outcome of the case does not mean that he or she has not
16 told the truth. It is for you to decide from your observations
17 and applying your common sense and experience and all of the
18 other considerations mentioned whether the possible interest of
19 any witness has intentionally or otherwise colored or distorted
20 his or her testimony. You are not required to disbelieve an
21 interested witness; you may accept as much of his or her
22 testimony as you deem reliable and reject as much as you deem
23 unworthy of acceptance.

24 You've heard evidence that, at some earlier time,
25 witnesses have said or done something that counsel argues is

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1 inconsistent with their trial testimony.

2 Evidence of a prior inconsistent statement was placed
3 before you not because it is itself evidence of the guilt or
4 innocence of the defendant, but only for the purpose of helping
5 you decide whether to believe the trial testimony of a witness
6 who may have contradicted a prior statement. If you find that
7 the witness made an earlier statement that conflicts with the
8 witness's trial testimony, you may consider that fact in
9 deciding how much of the witness's trial testimony, if any, to
10 believe.

11 In making this determination, you may consider whether
12 the witness purposely made a false statement or whether it was
13 an innocent mistake; whether the inconsistency concerns an
14 important fact or whether it had to do with a small detail;
15 whether the witness had an explanation for the inconsistency;
16 and whether that explanation appealed to your common sense.

17 It is exclusively your duty, based upon all the
18 evidence and your own good judgment, to determine whether the
19 prior statement was inconsistent, and if so, how much, if any,
20 weight to give to the inconsistent statement in determining
21 whether to believe all or part of the witness's testimony.

22 You have heard evidence that certain witnesses made
23 earlier statements that were consistent with their trial
24 testimony. Such statements were admitted into evidence not as
25 independent evidence of guilt or innocence, but solely for

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1 whatever light they may shed on the witness's credibility. If
2 you find that a witness had a motive to testify as he did, but
3 also that he told the same story before he had that motive, you
4 may take that into account in deciding whether the witness's
5 interest or motive colored his testimony.

6 Now a word about the witness preparation. You heard
7 evidence during the trial that witnesses discussed the facts of
8 this case with the lawyers before the witnesses appeared in
9 court. Although you may consider that fact when you are
10 evaluating a witness's credibility, I should tell you that
11 there is nothing either unusual or improper about a witness
12 meeting with lawyers before testifying so that the witness can
13 be made aware of the subjects that he or she will be questioned
14 about, focus on those subjects, and have the opportunity to
15 review relevant exhibits before being questioned about them.

16 (Continued on next page)

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1 THE COURT: In fact, it would be unusual for a lawyer
2 to call a witness without such consultation. Again, the weight
3 that you should give to the fact or the nature of the witness's
4 preparation for his or her testimony and what inferences you
5 should draw from such preparation are matters completely within
6 your discretion.

7 In this case, you've heard evidence in the form of
8 stipulations of fact. A stipulation of fact is an agreement
9 between the parties that a certain fact is true. You must
10 regard such agreed-upon facts as true; however, it's for you to
11 determine the effect to be given to those facts.

12 Various bank records and other electronic
13 communications, such as emails, have been admitted into
14 evidence. I instruct you that this evidence was all obtained
15 in a lawful manner, and that no one's rights were violated, and
16 that a party's use of this evidence is entirely lawful.

17 Therefore, regardless of any personal opinions you
18 might have regarding the obtaining of such evidence, you must
19 give such evidence full consideration, along with any -- excuse
20 me, along with all the other evidence in this case in
21 determining whether the government has proved the defendant's
22 guilt beyond a reasonable doubt. What significance you attach
23 to this evidence is entirely your decision.

24 During the trial, you've heard testimony of witnesses
25 bearing on the investigative techniques used in this case. You

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1 may consider these facts in deciding whether the government has
2 met its burden of proof because, as I told you, you should look
3 to all of the evidence -- or lack of evidence -- in deciding
4 whether the defendant is guilty. However, you are also
5 instructed that there is no legal requirement that the
6 government use any of these specific investigative techniques
7 to prove its case. Whether you approve or disapprove of
8 various law enforcement techniques, or whether you might have
9 chosen to use or not use any particular technique is not the
10 question. Your concern, as I've said, is to determine whether
11 or not, on the evidence or lack of evidence, the defendant's
12 guilt has been proved beyond a reasonable doubt.

13 Both the government and the defendant have the same
14 power to subpoena witnesses to testify on their behalf. If a
15 potential witness could have been called by the government or
16 by the defendant, and neither called the witness, then you may
17 draw the conclusion that the testimony of the absent witness
18 might have been unfavorable to the government or to the
19 defendant or to both.

20 On the other hand, it's equally within your province
21 to draw no inference at all from the failure of either side to
22 call a witness. You should remember that there is no duty on
23 either side to call a witness whose testimony would be merely
24 cumulative of testimony already in evidence or who would merely
25 provide additional testimony to facts already in evidence. You

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1 should, however, remember my instruction that the law does not
2 impose on a defendant in a criminal case the burden or duty of
3 calling any witnesses or producing any evidence.

4 The defendant, Ari Teman, did not testify in this
5 case. Under our Constitution, a defendant has no obligation to
6 testify or to present any evidence because it's the
7 government's burden to prove the defendant guilty beyond a
8 reasonable doubt. That burden remains with the government
9 throughout the entire trial and never shifts to the defendant.
10 A defendant is never required to prove that he is innocent.

11 You may not attach any significance to the fact that
12 Mr. Teman did not testify. No adverse inference against him
13 may be drawn by you because he did not take the witness stand.
14 You may not consider this against him in any way in your
15 deliberations.

16 Now, ladies and gentlemen, I'm about to turn to part
17 2. That concludes part 1, instructions that would apply in
18 just about any case.

19 I'm going to stretch my legs, I invite you to do the
20 same, because we are about to dig into the instructions that
21 are specific to this case.

22 (Pause)

23 THE COURT: All right. I will turn now to my
24 instructions to you relating to the charges brought against the
25 defendant in this case.

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1 The defendant is formally charged in an indictment.
2 As I instructed you at the outset of this case, an indictment
3 is merely a charge or accusation. It is not evidence and it
4 does not prove or even indicate guilt. As a result, you are
5 not to give it any weight in deciding the defendant's guilt or
6 lack of guilt. What matters is the evidence you heard at this
7 trial. Indeed, as I previously noted, the defendant is
8 presumed innocent, and it is the prosecution's burden to prove
9 the defendant's guilt beyond a reasonable doubt.

10 The indictment contains four counts. Each count is a
11 separate offense or crime. Each count must, therefore, be
12 considered separately by you, and you must return a separate
13 verdict on each count.

14 Counts One and Two of the indictment charge the
15 defendant with committing the offense of bank fraud. Count One
16 charges him with a bank fraud scheme committed between in or
17 about April 2019, up to and including in or about June 2019.
18 Count Two charges him with a bank fraud scheme committed in or
19 about March 2019.

20 Similarly, Count Three and Four charge the defendant
21 with two separate instances of wire fraud. Count Three charges
22 him with a wire fraud scheme committed between in or about
23 April 2019, up to and including in or about June 2019. Count
24 Four charges him with committing a wire fraud scheme in or
25 about March 2019.

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1 I'm now going to instruct you on the applicable law
2 for each of the four counts.

3 So let's begin with bank fraud.

4 As I said, Counts One and Two both charge the
5 defendant with bank fraud, in violation of a statute known as
6 Title 18, United States Code, Section 1344. In other words,
7 each count charges that the defendant devised a scheme to
8 defraud a federally insured bank.

9 Count One charges the defendant with committing a bank
10 fraud scheme in connection with the deposit in April 2019 of 27
11 checks, allegedly by creating, and then making the false
12 pretense and representation to the bank that he had the account
13 holders' authority to deposit these checks.

14 Count One of the indictment reads, and I'm quoting
15 now: "From at least in or about April 2019, up to and
16 including at least in or about June 2019, in the Southern
17 District of New York and elsewhere, Ari Teman, the defendant,
18 willfully and knowingly did execute and attempt to execute a
19 scheme and artifice to defraud a financial institution, the
20 deposits of which were then insured by the Federal Deposit
21 Insurance Corporation; and to obtain monies, funds, credits,
22 assets, securities and other property owned by and under the
23 custody and control of such financial institution by means of
24 false and fraudulent pretenses, representations, and promises,
25 to wit, Teman deposited counterfeit checks in the name of three

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1 third parties, respectively Entity 1, Entity 2, and Entity 3,
2 into an account held at a particular financial institution,
3 Financial Institution 1, and subsequently attempted to and did
4 use those funds for his personal benefit."

5 That ends that quote. That's the quote of Count One.

6 Count Two charges the defendant with committing a bank
7 fraud scheme in connection with a deposit in March 2019 of two
8 checks, again, allegedly by creating, and then making the false
9 pretense and representation to the bank that he had the account
10 holders' authority to deposit, those checks.

11 Count Two of the indictment reads, and I'm quoting:
12 "In or about March 2019, in the Southern District of New York
13 and elsewhere, Ari Teman, the defendant, willfully and
14 knowingly did execute and attempt to execute a scheme and
15 artifice to defraud a financial institution, the deposits of
16 which were then insured by the Federal Deposit Insurance
17 Corporation, and to obtain monies, funds, credits, assets,
18 securities, and other property owned by and under the custody
19 and control of such financial institution by means of false and
20 fraudulent pretenses, representations, and promises, to wit,
21 Teman deposited counterfeit checks in the name of Entity 3 and
22 another third party, Entity 4, into an account held at
23 Financial Institution 1, and subsequently attempted to aid --
24 attempted to and did use those funds for his personal benefit."

25 I instruct you that in connection with this

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1 indictment, Entity 1 refers to ABJ Milano LLC, operated by ABJ
2 Properties; Entity 2 refers to ABJ Lenox LLC, operated by ABJ
3 Properties; Entity 3 refers to 518 West 204 LLC, operated by
4 Coney Realty; Entity 4 refers to 18 Mercer Equity, Inc.,
5 operated by Crystal Real Estate Management; and Financial
6 Institution 1 refers to Bank of America.

7 To find the defendant guilty of the crimes charged in
8 Counts One and Two of the indictment, the government must
9 establish each of the following elements beyond a reasonable
10 doubt, and there are three:

11 First, that there was a scheme or artifice to defraud
12 a bank, as alleged in the indictment, or that there was a
13 scheme or artifice to obtain money or other property owned by a
14 financial institution by means of materially false or
15 fraudulent pretenses, representations, or promises, as alleged
16 in the indictment.

17 Second, that the defendant knowingly and willfully
18 executed or attempted to execute the scheme or artifice; that
19 is, that the defendant acted with knowledge of the fraudulent
20 nature of the scheme, and with the specific intent to defraud
21 the bank or to obtain, by deceiving the bank, money or other
22 property owned or controlled by the bank.

23 And third, that the deposits of the bank involved
24 were, at the time of the scheme, insured by the Federal Deposit
25 Insurance Corporation.

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1 Now I will explain each of the three elements of bank
2 fraud in more detail.

3 The first element that the government must prove
4 beyond a reasonable doubt is that on or about the dates set
5 forth in the indictment, (1) there was a scheme or artifice to
6 defraud a bank; or, (2) there was a scheme or artifice to
7 obtain money or other property owned by or under the custody or
8 control of such a bank by means of false or fraudulent
9 pretenses, representation, or promises that were material to
10 the scheme.

11 The government must prove the existence of only one of
12 these schemes. These two concepts are not necessarily mutually
13 exclusive. If you find that either one type of scheme or
14 artifice or both existed, then the first element of bank fraud
15 is satisfied. However, you must be unanimous in your view as
16 to at least one type of scheme or artifice that existed. If
17 half of you think (1), but not (2); and the other half think
18 (2), but not (1), then you must vote to acquit the defendant.

19 I'll now explain what these terms mean, and I'll begin
20 with the key terms from (1), which, again requires the
21 government to prove beyond a reasonable doubt that there was a
22 scheme or artifice to defraud a bank.

23 A "scheme or artifice" is a plan, a device, or course
24 of conduct to accomplish an objective. "Fraud" is a general
25 term. It is a term that includes all the possible means by

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1 which a person seeks to gain some unfair advantage over another
2 person by false representations, false suggestions, false
3 pretenses, or concealment of the truth. The unfair advantage
4 sought can involve money, property, or anything of value.

5 And thus, a scheme to defraud a bank is a pattern or
6 course of conduct concerning a material matter designed to
7 deceive a federally insured bank into releasing money or
8 property with the intent to cause the bank to suffer an actual
9 or potential loss. This term "scheme to defraud" thus embraces
10 all dishonest means, however ingenious, clever, or crafty, by
11 which a person seeks to trick another out of their property.
12 For example, a scheme to defraud may be accomplished through
13 trickery, deceit, deception, or swindle.

14 The government does not need to show that the
15 defendant's conduct actually caused the bank to release money
16 or property, but rather only needs to show that the defendant's
17 conduct was designed to deceive the bank into releasing money
18 or property.

19 This defines a scheme or artifice to defraud a bank,
20 the first type of scheme prohibited by the federal bank fraud
21 statute. You may find that a scheme to defraud existed only if
22 the government has proven beyond a reasonable doubt the
23 existence of the scheme alleged in the indictment, which I read
24 to you a few moments ago.

25 Now, the second type of scheme charged, described at

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1 the beginning of this section as (2), is a scheme to obtain
2 money or other property owned by or under the custody and
3 control of a bank by means of false or fraudulent pretenses,
4 representations, or promises. As to this type of scheme, the
5 government must show that false and fraudulent pretenses,
6 representations, or promises were employed, and that they were
7 directed at the bank with the intention of deceiving it.

8 And this brings me to false or fraudulent pretenses,
9 representations, or promises.

10 A representation is fraudulent if it was made falsely
11 with the intent to deceive. The deceptive means that are
12 prohibited are not limited to active misrepresentations or lies
13 told to the bank. Just as affirmatively stating facts as true
14 when the facts are not true may constitute a false
15 representation, the law recognizes that false representations
16 need not be based on spoken words alone. The deception may
17 arise from the intentional omission or concealment of facts
18 that make what was written, said, or done deliberately
19 misleading.

20 The arrangement of the words or the circumstances in
21 which they are used may convey a false and deceptive
22 appearance. Accordingly, the misrepresentation may be written,
23 oral, or rise from a course of conduct intended to communicate
24 false facts to the bank. If there is intentional deception,
25 the manner in which it is accomplished does not matter.

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1 These false representations must be "material," which
2 is a term I'll define momentarily. In short, it doesn't matter
3 whether any decision-makers at the bank actually relied upon
4 the misrepresentation; it is sufficient if the
5 misrepresentation is one that is capable of influencing the
6 bank's decision and is intended by the defendant to do so.

7 Let me repeat again that there are two ways the
8 government may satisfy this first element beyond a reasonable
9 doubt: First, by proving that there was a scheme to defraud a
10 bank; or second, by proving that there was a scheme to obtain
11 money or other property owned by or under the custody or
12 control of the bank by false and fraudulent pretenses,
13 representations, or promises.

14 Now, I've referred, in the context of both ways the
15 government may satisfy this first element, to a "materiality"
16 requirement. We use the word "material" to distinguish between
17 the kinds of statements we care about and those that are of no
18 real importance.

19 A material fact is one that would reasonably be
20 expected to be of concern to a reasonable and prudent person
21 relying on the representation or statement in making a
22 decision. This means that if you find a particular statement
23 of fact made by the defendant to have been false, you must then
24 determine whether that statement of fact was one that a
25 reasonable person might have considered important in making his

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1 or her decision. And the same principle applies to fraudulent
2 half-truths or omissions of material facts.

3 The government must -- excuse me.

4 The government need not prove an actual loss of funds
5 by the bank; nor is it necessary for the government to
6 establish that the defendant actually realized any gain from
7 the scheme. The success of the scheme to defraud is
8 irrelevant. What matters is whether there existed a scheme to
9 defraud. The bank fraud statute prohibits successfully
10 defrauding a financial institution, as well as attempts to do
11 so. You must concentrate on whether there is a scheme -- there
12 was such a scheme.

13 It does not matter whether the bank involved might
14 have discovered the fraud, had it probed further or been more
15 careful. If you find that a scheme or artifice existed, it is
16 irrelevant whether you believe the bank was careless, gullible,
17 or even negligent.

18 Finally, in order to establish the existence of a
19 scheme, the government is not required to establish that the
20 defendant himself started the scheme to defraud; it's
21 sufficient if you find that a scheme to defraud existed, even
22 if initiated by another.

23 If you find that the government has sustained its
24 burden of proof that a scheme to defraud a bank or to obtain
25 money by false pretenses did exist as charged, you next should

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1 consider the second element.

2 I'm about to turn now to the second element.

3 The second element that the government must establish
4 beyond a reasonable doubt is that the defendant executed or
5 attempted to execute the scheme knowingly, willfully, and with
6 the intent to defraud the bank or to obtain money or property
7 owned by the bank or under the bank's custody or control.

8 A person acts knowingly when he acts voluntarily and
9 deliberately, rather than mistakenly or inadvertently. A
10 person acts willfully when he acts knowingly and purposely,
11 with an intent to do something the law forbids, that is to say,
12 with a bad purpose either to disobey or disregard the law.
13 It's not necessary that the defendant knew that he was
14 violating a particular law; it is enough if you find that he
15 was aware that what he was doing was, in general, unlawful.

16 To act with the intent to defraud means to act
17 knowingly and with a specific intent to deceive for the purpose
18 of causing some financial loss to another.

19 The question of whether a person acted knowingly,
20 willfully, and with intent to defraud is a question of fact for
21 you to determine, like any other question of fact. Direct
22 proof of knowledge and fraudulent intent is almost never
23 available. It would be a rare case where it could be shown
24 that a person wrote or stated that as of a given time in the
25 past, he committed an act with fraudulent intent. Such direct

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1 proof is not required.

2 Accordingly, the ultimate facts of knowledge and
3 criminal intent may be established by circumstantial evidence,
4 based on a person's outward manifestations, his words, his
5 conduct, his acts, all the surrounding circumstances disclosed
6 by the evidence, and the rational or logical inferences that
7 may be drawn from the evidence. Use your common sense. But
8 regardless of whether you look to direct evidence,
9 circumstantial evidence, or a combination thereof, the
10 government must establish the essential elements of the crime
11 charged beyond a reasonable doubt, including the requisite
12 mental states.

13 The government must prove beyond a reasonable doubt
14 that the defendant participated in the alleged scheme with an
15 understanding of its fraudulent or deceptive character and with
16 the intent to help it succeed. There are certain things the
17 government need not prove in order to meet that burden. It
18 need not prove that the defendant participated in or even knew
19 about all operations of the scheme.

20 It need not prove that the defendant originated the
21 scheme or participated in it from its inception, since a person
22 who participates in a scheme -- even after it begins -- is just
23 as guilty as those who participated from the beginning, as long
24 as he becomes aware of the scheme's general purpose and
25 operation and acts intentionally to further its unlawful goal

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1 or goals. It need not prove that the defendant participated in
2 the scheme to the same degree as other participants. And
3 finally, the government need not prove actual or potential loss
4 to the bank, so long as there's evidence that the defendant
5 intended to expose the bank to such loss.

6 Turning to the third element.

7 The third and final element that the government must
8 prove beyond a reasonable doubt is that the bank that was the
9 subject of the defendant's scheme or artifice was a
10 federally-insured financial institution. This simply means
11 that the bank's deposits had to be insured by the Federal
12 Deposit Insurance Corporation. The government need not show
13 that the defendant knew that the bank in question was federally
14 insured to establish -- excuse me, to satisfy this first --
15 this third element; it must prove, however, that the defendant
16 intended to defraud a financial institution.

17 Now, the bank fraud statute prohibits not only
18 successfully defrauding a financial institution, but also
19 attempting, which means trying to do so. And thus, the
20 government is required to prove only that the defendant
21 attempted or tried to execute the alleged scheme or artifice.
22 There is no need for the government to prove that the defendant
23 was successful in this endeavor.

24 In order to prove that the defendant attempted bank
25 fraud or wire fraud, the -- excuse me, bank fraud, the evidence

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1 must show beyond a reasonable doubt that, (1) the defendant
2 intended to commit the bank fraud; and (2) the defendant
3 willfully took some action that was a substantial step in an
4 effort to bring about or accomplish the crime. Mere intention
5 to commit a specific crime does not amount to an attempt. In
6 order to convict the defendant of an attempt, you must find
7 beyond a reasonable doubt both that he intended to commit the
8 crime of bank fraud, and that he took some action that was a
9 substantial step towards the commission of that crime.

10 Merely preparing to commit a crime is not the same
11 thing as taking a substantial step towards the commission of
12 the crime. The defendant must go beyond simply preparing and
13 perform an act that confirms his intention to execute the
14 scheme. The government does not have to prove that the
15 defendant did everything except take the last step necessary to
16 complete the scheme; any substantial step beyond mere
17 preparation is enough.

18 That concludes my discussion of bank fraud.

19 In a moment, I'm going to turn to Counts Three and
20 Four, which charge the offense of wire fraud.

21 All right. I'm now going to turn to Counts Three and
22 Four, both of which charge the defendant with wire fraud, in
23 violation of Title 18, United States Code, Section 1343.

24 Count Three charges the defendant with a wire fraud
25 scheme in connection with the deposit in April 2019 of the 27

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1 checks which are the subject of Count One, allegedly by
2 creating, and then making the false pretense and representation
3 to the bank that the defendant had the account holders'
4 authorization to deposit those checks.

5 Count Three charges -- and again, I'm reading from the
6 indictment -- that -- and I'm quoting: "From at least in or
7 about April 2019, up to and including at least in or about June
8 2019, in the Southern District of New York and elsewhere, Ari
9 Teman, the defendant, willfully and knowingly, having devised
10 and intending to devise a scheme and artifice to defraud, and
11 for obtaining money and property by means of false and
12 fraudulent pretenses, representations, and promises, did
13 transmit and cause to be transmitted by means of wire, radio,
14 and television communication in interstate and foreign
15 commerce, writings, signs, signals, pictures, and sounds, for
16 the purpose of executing such scheme and artifice, to wit,
17 Teman deposited counterfeit checks, drawing funds from accounts
18 belonging to 'Entity 1,' 'Entity 2,' and 'Entity 3,' and
19 subsequently attempted to and did use those funds for his
20 personal benefit and, in furtherance of such a scheme, caused a
21 wire communication to be sent."

22 Count Four charges the defendant with a wire fraud
23 scheme in connection with a deposit in March 2019 of the two
24 checks which are the subject of Count Two, allegedly by
25 creating, and then making the false pretense and representation

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1 to the bank that the defendant had the account holders'
2 authorization to deposit those checks.

3 Count Four charges -- and again, I'm reading from the
4 indictment -- that, and I quote: "In or about March 2019, in
5 the Southern District of New York and elsewhere, Ari Teman, the
6 defendant, willfully and knowingly, having devised and
7 intending to devise a scheme and artifice to defraud, and for
8 obtaining money and property by means of false and fraudulent
9 pretenses, representations, and promises, did transmit and
10 caused to be transmitted by means of wire, radio, and
11 television communication, in interstate or foreign commerce,
12 writings, signs, signals, pictures, and sounds, for the purpose
13 of executing such scheme and artifice, to wit, Teman deposited
14 counterfeit checks, drawing funds from accounts belonging to
15 Entity 3 and Entity 4, and subsequently attempted to and did
16 use those funds for his personal benefit and, in furtherance of
17 such a scheme, caused a wire communication to be sent."

18 Earlier -- I'm done quoting.

19 Earlier, I instructed you about who the terms "Entity
20 1," "Entity 2," "Entity 3," and "Entity 4," as used in Counts
21 One and Two, refer to. Those instructions equally apply to
22 Counts Three and Four.

23 I'm now going to turn to the elements of wire fraud.

24 In order to prove the defendant guilty of wire fraud
25 in both Counts Three and Four, the government must establish

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1 each of the following three elements beyond a reasonable doubt:

2 First, that there was a scheme or artifice to defraud
3 or to obtain money or property by materially false or
4 fraudulent pretenses, representations, or promises.

5 Second, that the defendant knowingly and willfully
6 devised or participated in the scheme or artifice to defraud,
7 with knowledge of the fraudulent nature of the scheme, and with
8 a specific intent to defraud.

9 And third, in execution of that scheme, the defendant
10 used or caused others to use interstate or foreign wires as
11 specified in the indictment.

12 My instructions as to Counts One and Two related to
13 bank fraud cover a number of the concepts relevant to Counts
14 Three and Four; and so my instructions as to Counts Three and
15 Four will be brief.

16 The first element that the government must prove
17 beyond a reasonable doubt is that there was a scheme to defraud
18 or obtain money or property. I've already instructed you in
19 connection with Counts One and Two what it means to employ a
20 scheme or artifice to defraud. Those instructions apply here
21 as well.

22 The scheme that the government alleges in Count Three
23 is the same scheme involving the defendant's depositing of 27
24 checks in April 2019, which is the subject of Count One. To
25 find the first element as to Count Three, you must therefore

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1 find that the scheme had as an object the use of the funds from
2 these checks for the defendant's personal benefit.

3 And similarly, the scheme the government alleges in
4 Count Four is the same scheme involving the defendant's
5 depositing of two checks in March 2019, which is the subject of
6 Count Two. To find the first element as to Count Four, you
7 must therefore find that the scheme had as an object the use of
8 the funds from these checks for the defendant's personal
9 benefit.

10 Turning to the second element.

11 The second element that the government must prove
12 beyond a reasonable doubt is that the defendant devised or
13 participated in the scheme knowingly, willfully, and with a
14 specific intent to defraud. I've already defined for you
15 "knowingly," "willfully," and "with a specific intent to
16 defraud." My earlier instructions apply here as well. I'm
17 going to quickly define a few additional terms as to this
18 element.

19 To "devise" a scheme to defraud is to concoct or plan
20 it. To "participate" in the scheme to defraud means to
21 associate oneself with it with the intent of making it succeed.

22 And the third and final element of the wire fraud
23 charge that the government must establish beyond a reasonable
24 doubt is that interstate or foreign wires were used in
25 furtherance of the scheme to defraud.

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1 So "wires" includes telephone calls, faxes, email,
2 internet, radio, or television communications. The use of the
3 wires must have been between states or between the United
4 States and another country. The wire communication must pass
5 between two or more states as, for example, a telephone call
6 between New York and New Jersey; or it must pass between the
7 United States and a foreign country, such as a telephone call
8 between New York and London. The government is not required,
9 however, to prove that the defendant knew or could foresee the
10 interstate or international nature of the wire communication.

11 The use of the wires need not itself be fraudulent.
12 Stated another way, the communication need not contain any
13 fraudulent representation. To be in furtherance of the scheme,
14 the wire communication must be incident to an essential part of
15 the scheme to defraud and must have been caused by the
16 defendant. It is sufficient if the wires were used to further
17 or assist in carrying out the scheme to defraud or the scheme
18 to obtain money by means of false representations.

19 It is not necessary for the defendant to be
20 personally -- to be directly or personally involved in any wire
21 communication, so long as the communication is reasonably
22 foreseeable in the execution of the alleged scheme to defraud
23 in which the defendant is accused of participating. In this
24 regard, it's sufficient to establish this element of the crime
25 if the evidence justifies a finding that the defendant caused

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1 the wires to be used by others. This doesn't mean that the
2 defendant must have specifically authorized others to execute a
3 wire communication; rather, that when one does an act with
4 knowledge that the use of the wires will follow in the ordinary
5 course of business, or when such use of the wires can
6 reasonably be foreseen -- even if not actually intended -- then
7 he causes the wires to be used.

8 The government must prove beyond a reasonable doubt
9 the particular use of the wires on which the indictment is
10 based. And here, the wire fraud counts are based on wire
11 communications related to the defendant's depositing of the
12 alleged counterfeit checks. To convict the defendant on Counts
13 Three and Four, you must unanimously agree on a particular one
14 of these wires, and that it was in furtherance of the charged
15 wire fraud scheme.

16 However, the government does not have to prove that
17 the wire was used on the exact date charged; it's sufficient if
18 the evidence establishes beyond a reasonable doubt that the
19 wires were used on a date reasonably near the date or dates
20 alleged.

21 All right. That concludes my review of the elements
22 of wire fraud. I have a few final substantive instructions
23 that are not particular to a specific count. The first relates
24 to the requirement that the jury's verdict be unanimous.

25 Each of the four counts in the indictment charges the

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1 defendant with an offense -- either bank fraud or wire fraud --
2 involving multiple checks drawn on the accounts of multiple
3 entities. And thus, Counts One and Three allege these
4 respective offenses in connection with the defendant's alleged
5 deposit of 27 checks, each drawn on the account of one of three
6 entities: ABJ Milano LLC, ABJ Lenox LLC, and 518 West 204 LLC.
7 And Counts Two and Four allege these respective offenses in
8 connection with the defendant's alleged deposit of two checks:
9 One drawn on the account of 518 West 204 LLC, and the other
10 drawn on the account of 18 Mercer Equity, Inc.

11 As to each count, I instruct you that the government
12 need not prove and you need not find that the elements of the
13 offense in question have been met with respect to each of the
14 checks or each of the entities to which that count relates.
15 However, to convict the defendant of a particular count, you
16 must unanimously agree that the elements of the offense in
17 question have been established beyond a reasonable doubt with
18 respect to at least one entity to which that count relates.

19 So, for example, on Count Two, you may not return a
20 verdict of guilty unless you unanimously agree that the
21 elements of bank fraud have been established with respect to
22 one of these two entities: 518 West 204 LLC, or 18 Mercer,
23 Inc. to which that count relates.

24 If half of the jury found the elements of bank fraud
25 had been established with respect to the check drawn on the

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1 account of 518 West 204 LLC, and the other half of the jury
2 found the elements of bank fraud had been established with
3 respect to 18 Mercer, Inc., but the jury was not in unanimous
4 agreement as to one entity, you could not return a verdict of
5 guilty.

6 Next, let me turn to good faith.

7 An essential element of the crimes of bank fraud and
8 wire fraud, as charged in Counts One through Four of the
9 indictment, is intent to defraud. It follows that good faith
10 on the part of the defendant is an absolute defense to a charge
11 of fraud. The burden of establishing lack of good faith and
12 criminal intent rests upon the prosecution. A defendant is
13 under no burden to prove his good faith; rather, the government
14 must prove bad faith or knowledge of falsity beyond a
15 reasonable doubt.

16 Under the bank fraud and wire fraud statutes, even
17 false representations or statements or omissions of material
18 fact do not amount to a fraud unless done with fraudulent
19 intent. However, misleading or deceptive a plan may be, it is
20 not fraudulent if it was devised or carried out in good faith.
21 If the defendant believed in good faith that he was acting
22 properly -- even if he was mistaken in that belief, and even if
23 others were injured by his conduct -- there is no crime.

24 A venture commenced in good faith may become
25 fraudulent if it is continued after a fraudulent intent has

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1 been formed; and therefore, good faith is no defense when the
2 defendant first made representations in good faith, but later,
3 during the time charged in the indictment, the defendant
4 realized that the representations were false and nevertheless
5 deliberately continued to make them.

6 You must review and put together all of the
7 circumstances in deciding whether or not it has been
8 established beyond a reasonable doubt that the defendant
9 devised or participated in a scheme to defraud knowingly,
10 willfully, and with the intent to defraud, or whether he acted
11 in good faith.

12 There is a final consideration to bear in mind in
13 deciding whether or not the defendant acted in good faith. You
14 are instructed that if the defendant participated in the scheme
15 to defraud, then a belief by the defendant -- if such a belief
16 existed -- that ultimately everything would work out so that no
17 one would lose any money, does not require a finding by you
18 that he acted in good faith. If the defendant participated in
19 the scheme for the purpose of causing financial or property
20 loss to another, then no amount of honest belief on the part of
21 the defendant that the scheme will cause ultimately a profit or
22 cause no harm will excuse fraudulent actions or fraudulent
23 representations by him.

24 Now let's turn to advice of counsel.

25 You've heard evidence that the defendant consulted

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1 with a lawyer, Ariel Reinitz. You may consider that evidence
2 in deciding whether the defendant acted knowingly, willfully,
3 and with a specific intent to defraud.

4 The mere fact that the defendant may have received
5 legal advice does not in itself necessarily constitute a
6 complete defense to the charges of bank fraud and wire fraud.
7 Instead, you must ask yourself whether the defendant honestly
8 and in good faith sought the advice of a competent lawyer as to
9 what he may lawfully do, whether he fully and honestly laid all
10 the facts before his lawyer, and whether in good faith he
11 honestly followed such advice, relying on it and believing it
12 to be correct.

13 In short, you should consider whether, in seeking and
14 obtaining advice from a lawyer, the defendant intended that his
15 acts shall be lawful. If he did so, it is the law that a
16 defendant cannot be convicted of a crime that involves willful
17 and unlawful intent, even if such advice were an inaccurate
18 construction of the law.

19 On the other hand, no man can willfully and knowingly
20 violate the law and excuse himself from the consequences of his
21 conduct by pleading that he followed the advice of his lawyer.
22 Whether the defendant acted in good faith for the purpose of
23 seeking guidance as to the specific acts in this case, and
24 whether he made a full and complete report to his lawyer, and
25 whether he acted substantially in accordance with the advice

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1 received are questions for you to determine.

2 Let's talk now about a concept called "conscious
3 avoidance."

4 I told you earlier that the defendant must have acted
5 knowingly, as I have defined that term, in order to be
6 convicted. That is true with respect to all four counts
7 charged in the indictment. In determining whether the
8 defendant acted knowingly, you may consider whether the
9 defendant closed his eyes to what would otherwise have been
10 obvious to him. That is what the phrase "conscious avoidance"
11 refers to.

12 As I've told you before, acts done knowingly must be a
13 product of a person's conscious intention; they cannot be the
14 product of carelessness, negligence, or foolishness. But a
15 person may not intentionally remain ignorant of a fact that is
16 material and important to his conduct in order to escape the
17 consequences of the criminal law.

18 Here, the government argues that the defendant
19 consciously avoided material information insofar as he did not
20 invoice or otherwise notify his customers in advance of his
21 drawing and depositing checks on their accounts in March and
22 April 2019 of his claim that they owed his business money in
23 the amounts reflected on those checks. The government alleges
24 that the defendant was thereby closing his eyes to the fact
25 that the customers did not approve and would not have approved

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1 those charges.

2 The defendant disputes that he consciously avoided
3 learning such information. He argues that he believed in good
4 faith, based on his communications with his customers and his
5 understanding of communications he believed his attorney had
6 had with his customers, that the customers had given him
7 advance approve for these charges, and also advance approval to
8 remotely create checks on their accounts as a means of paying
9 the debts that they owed him.

10 As to this point, I instruct you as follows: An
11 argument by the government of conscious avoidance is not a
12 substitute for proof of knowledge; it's simply another factor
13 that you, the jury, may consider in deciding what the defendant
14 knew. Thus, if you find beyond a reasonable doubt that the
15 defendant was aware that there was a high probability that a
16 fact was so, but that the defendant deliberately avoided
17 confirming that fact, such as by purposely closing his eyes to
18 it or intentionally failing to investigate it, then you may
19 treat this deliberate avoidance of positive knowledge as the
20 equivalent of knowledge.

21 In sum, if you find that the defendant believed there
22 was a high probability that a fact was so, and that the
23 defendant deliberately and consciously avoided learning the
24 truth of that fact, you may find that the defendant acted
25 knowingly with respect to that fact. However, if you find that

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1 the defendant actually believed the fact was not so, then you
2 may not find that he acted knowingly with respect to that fact.
3 You must judge all of the circumstances and all of the proof
4 whether the government did or did not satisfy its burden of
5 proof beyond a reasonable doubt.

6 Now, switching gears. Variances in dates and amounts,
7 that's the next topic header here.

8 The indictment refers to a range of dates and monetary
9 amounts. I instruct you that it does not matter if a specific
10 event is alleged to have occurred on or about a certain date,
11 but the testimony indicates that it, in fact, was a different
12 date. And likewise, it doesn't matter if a transaction is
13 alleged to have involved a certain amount of money, but the
14 testimony indicates that it was a different amount of money.
15 The law only requires a substantial similarity between the
16 dates and amounts alleged in the indictment and the dates and
17 amounts established by the evidence.

18 You've heard testimony that the defendant made
19 statements in which he claimed that his conduct was consistent
20 with innocence and not with guilt. The government claims that
21 these statements in which the defendant exculpated himself are
22 false. The defendant disputes this.

23 If you find that the defendant gave a false statement
24 in order to divert suspicion from himself, you may infer -- but
25 you are not required to infer -- that the defendant believed

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Charge

1 that he was guilty. You may not, however, infer on the basis
2 of this alone that the defendant is, in fact, guilty of the
3 crimes for which he is charged. Whether or not the evidence as
4 to the defendant's statements shows that the defendant believed
5 he was guilty, and the significance, if any, to be attached to
6 any such evidence, are matters for you, the jury, to decide.

7 One moment.

8 We're nearly done.

9 All right. Turning now to the concept of venue.

10 In addition to the elements that I've described, in
11 order to convict on each charged offense, you must decide
12 whether the crime occurred within the Southern District of New
13 York. The Southern District of New York includes Manhattan,
14 the Bronx, Westchester County, as well as some other areas.

15 In this regard, the government need not prove that the
16 crime was committed in its entirety in this district or that
17 the defendant himself was present here. It's sufficient to
18 satisfy this element if any act in furtherance of the crime
19 occurred in this district. The act itself may not be a
20 criminal act; it could include, for example, executing a
21 financial transaction within this district. And the act need
22 not have been taken by the defendant, so long as the act was
23 part of the crime that you find the defendant committed.

24 I should note that on this issue -- and this issue
25 alone -- the government need not offer proof beyond a

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1 reasonable doubt. Venue need be proven only by a preponderance
2 of the evidence. The government has satisfied its venue
3 obligations, therefore, if you conclude that it's more likely
4 than not that the crime occurred within this district. If you
5 find that the government has failed to prove this venue
6 requirement, you must acquit the defendant of these charges.

7 That concludes Section 2. And the last and third
8 section of my instructions is, by far, the shortest, and it
9 just refers to the -- deals with the mechanics of jury
10 deliberations.

11 I'm going to stretch my legs. You're at liberty to
12 follow suit or not.

13 (Pause)

14 THE COURT: All right. Ladies and gentlemen, that
15 concludes the substantive portion of my instructions to you.

16 You are about to go into the jury room and begin your
17 deliberations.

18 If during those deliberations you want to see any of
19 the exhibits, you may request that they be brought into the
20 jury room. If you want any of the testimony read, you may also
21 request that. Please remember that it's not always easy to
22 locate what you might want, and so please be as specific as you
23 possibly can in requesting exhibits or portions of the
24 testimony. And please be patient.

25 With respect to requests for testimony, it can

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Charge

1 sometimes take counsel and the Court some time going through
2 the transcript to identify the portions that are responsive to
3 your request. If you want any further explanation of the law
4 as I have explained it to you, you may also request that.

5 Now, to assist you in your deliberations, I'm
6 providing you with a rather ample care package. I'm giving you
7 in here -- and there's basically a folder of 12 copies of each
8 of the following things, so that everyone is on equal footing
9 in the jury room: I'm giving you a list of witnesses in the
10 order in which they testified; a list of exhibits, with a short
11 neutral description of what each exhibit is by exhibit number.
12 I think it also lists the witness who was the first to
13 authenticate or through whose testimony that exhibit was
14 admitted. A verdict form, which I'll discuss in a moment. And
15 a copy of these instructions. Again, there's one for each
16 juror. I'm also providing you with a copy of the indictment.
17 But, again, I remind you that an indictment is not evidence.

18 Now, communications with the Court.

19 Your requests for exhibits or testimony -- in fact,
20 any communications with the Court -- should be made to me in
21 writing, signed by your foreperson -- I'll get to that in a
22 moment -- and given to one of the marshals. In any event, do
23 not tell me or anyone else how the jury stands on any issue
24 until a unanimous verdict has been requested.

25 Notes. Some of you -- many of you -- have taken notes

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1 periodically throughout this trial. I want to emphasize, as I
2 did at the start of the trial, that as you're about to begin
3 your deliberations, notes are simply an aid to memory. Notes
4 that any of you may have made may not be given any greater
5 weight or influence than the recollections or impressions of
6 other jurors -- whether from notes or memory -- with respect to
7 the evidence presented or what conclusions, if any, should be
8 drawn from such evidence. All jurors' recollections are equal.
9 Here's the key thing: If you can't agree on what you remember
10 the testimony to have been, you can ask to have the transcript
11 read back.

12 You will now retire in a moment to decide this case.
13 Your function is to weigh the evidence in this case and to
14 determine the guilt or lack of guilt of the defendant with
15 respect to the count charged in the indictment. You must base
16 your verdict solely on the evidence and these instructions as
17 to the law. And you are obliged on your oath as jurors to
18 follow the law as I instruct you, whether you agree or disagree
19 with a particular law in question.

20 It is your duty as jurors to consult with one another
21 and to deliberate with a view towards reaching an agreement.
22 Each of you must decide the case for himself or herself, but
23 you should do so only after a consideration of the case with
24 your fellow jurors, and you should not hesitate to change an
25 opinion when convinced that it is erroneous. Discuss and weigh

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1 your respective opinions dispassionately, without regard to
2 sympathy, without regard to prejudice, or favor for either
3 party, and adopt that conclusion which, in your good
4 conscience, appears to be in accordance with the truth.

5 When you are deliberating, all 12 jurors must be
6 present in the jury room. If a juror is absent, you must stop
7 deliberations.

8 Again, your verdict must be unanimous; but you are not
9 bound to surrender your honest convictions concerning the
10 effect or weight of the evidence for the mere purpose of
11 returning a verdict or solely because of the opinion of other
12 jurors. Each of you must make your own decision about the
13 proper outcome of this case based on your consideration of the
14 evidence and your discussion with your fellow jurors. No juror
15 should surrender his or her conscientious beliefs solely for
16 the purpose of returning a unanimous verdict.

17 Remember, at all times you are not partisans; you are
18 judges. You are judges of the facts. Your sole interest is to
19 seek the truth from the evidence in the case.

20 If you are divided, do not report how the vote stands.
21 If you reach a verdict, do not report what it is until you are
22 asked in open court.

23 Now, I've prepared a verdict form for you to use in
24 guiding your deliberation and recording your decision. Please
25 use that form to record your verdict.

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1 And finally, I referred a moment ago to a foreperson.
2 The first thing you should do when you retire to deliberate is
3 to take a vote to select one of you to sit as your foreperson,
4 and then send out a note to me indicating whom you have chosen.

5 The foreperson does not have any more power or
6 authority than any other juror; and his or her vote or opinion
7 doesn't count for any more than any other juror's vote or
8 opinion. The foreperson is merely your spokesperson to the
9 Court. He or she will send out any notes. And when the jury
10 has reached a verdict, he or she will notify the marshal that
11 the jury has reached a verdict, and you will come into open
12 court and, prompted by me, give that verdict.

13 As to the return of the verdict, after you have
14 reached a verdict, your foreperson will fill in and date the
15 form that has been given to you. All jurors must sign the form
16 reflecting each juror's agreement with the verdict. The
17 foreperson should then advise the marshal outside your door
18 that you are ready to return to the courtroom.

19 I will stress that each of you must be in agreement
20 with the verdict which is announced in court. Once your
21 verdict is announced by your foreperson in open court and
22 officially recorded, it cannot ordinarily be revoked.

23 In conclusion, ladies and gentlemen, I am sure that if
24 you listen to the views of your fellow jurors and if you apply
25 your own common sense, you will reach a fair verdict here.

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1 Members of the jury, that concludes my instructions to
2 you. I'm going to ask you to remain seated while I see a show
3 of hands from the attorneys to see if there are any additional
4 instructions they want me to have you -- me give to you or if I
5 inadvertently left something out or failed to cover.

6 Show of hands, anyone have anything to take up at the
7 sidebar? Yes? All right. Counsel, I'll see you at the
8 sidebar.

9 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: Mr. Imperatore?

3 MR. IMPERATORE: I believe the Court may have
4 misspoken on page 37, paragraph B at the top, fourth line down,
5 the typewritten text uses the word "reached". I heard your
6 Honor say "requested" instead of "reached". Very minor.

7 THE COURT: Very good.

8 Anything from you?

9 MR. GELFAND: Your Honor, the Court read the
10 instruction correctly but the one that goes back to the jury
11 should -- it's on page 25.

12 THE COURT: Yes, I'll correct that.

13 (In open court)

14 THE COURT: Ladies and gentlemen, I have two very
15 small things just to draw your attention.

16 One is that a moment or two ago I misspoke. The
17 following sentence at the top of page 37 of my instruction
18 reads as follows: "In any event, do not tell me or anyone else
19 how the jury stands on any issue until after a unanimous
20 verdict is reached." Counsel advised me I inadvertently said
21 the word "requested" instead of "reached". The word "reached"
22 is what I wrote and meant to say.

23 The other thing is that simply due to an error on my
24 part, on page 25, under the subheadline of attempt, a sentence
25 begins "In order to prove that the defendant attempted bank

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1 fraud or wire fraud..." When I spoke to you I omitted the word
2 "or prior fraud" because it wasn't supposed to be here. That's
3 part of the bank fraud instruction. When you see that on page
4 25, ignore the three words "or wire fraud".

5 All right. One moment. Before you retire to the jury
6 room, I must excuse our two alternates, with the great thanks
7 of the Court. You two, like everybody else, have been
8 extremely attentive and patient, and I am in your debt, as we
9 all are. I am sorry that you will miss the experience of
10 deliberating the jury, but the law provides for a jury of 12
11 persons in this case, so before the rest of the jury retires
12 into the jury room, I'm going to ask you if you have any
13 clothing or objects there, to promptly go to the jury room and
14 pick those up and then withdraw at that point. After I have
15 sworn our marshal, the rest of the jury will then enter the
16 jury room to begin deliberations.

17 Alternates, I have this important instruction to give:
18 Please, do not discuss the case with anyone or research the
19 case over the next few days. The same instructions that have
20 guided you throughout the trial need to continue to guide you,
21 and here is why: It is possible -- and I have actually had
22 this occur in a trial -- that unexpected developments such as
23 deliberating juror's serious illness may require the
24 substitution of the deliberating juror by an alternate, and so
25 it's vital that you not speak to anybody about the case, or

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1 research the case, or do anything that would compromise your
2 service, until you have been notified that the jury's
3 deliberations are over and the jury has been excused. If you
4 would like to be advised of the outcome of the trial, please be
5 sure that Mr. Smallman has a phone number to reach you. He is
6 going to ask you for your contact information. In the unlikely
7 circumstance that we need to bring you back, Mr. Smallman will
8 need to reach you and reel you back in here. So with that you
9 have our thanks. Mr. Smallman is going to bring the two of you
10 into the jury room. As soon as he has told me that you are out
11 of the jury room, ladies and gentlemen, you will go back.

12 While we're doing that, let me swear in our marshal.
13 Marshal, please come forward. Good morning.

14 (Marshal sworn)

15 THE COURT: Ladies and gentlemen, just as to the
16 schedule for today, lunch will appear, and I am assuming it
17 will be in the 12:30 to 1 range. You are not obliged to still
18 be deliberating at lunch. It's there if you are still
19 deliberating. Similarly, the usual afternoon snack will also
20 appear. Mr. Smallman is on that too, and that will be in the
21 2:30 to 3 range. Again, I make no presumption that you will be
22 or won't be deliberating then, but I simply order food for you
23 so that it's there.

24 If you are still deliberating at 5 o'clock, I will
25 bring you out to wish you well and say good night to you, and

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1 then you will resume your deliberations tomorrow beginning at
2 the same time that we have always started. So, that's our
3 schedule for today.

4 Mr. Smallman, I have sworn the marshal. May I ask you
5 to come forward, and I can give you their care package.

6 Again, your first order or business is to choose a
7 foreman. Thank you. You may now discuss the case.

8 (Jury retires to begin deliberations at 11:02 a.m.)

9 THE COURT: Be seated. Thank you, counsel, for being
10 active readers and catching both of those glitches. Beginning
11 with the government, anything to raise?

12 MR. BHATIA: Nothing, your Honor.

13 THE COURT: Defense?

14 MR. GELFAND: No, your Honor.

15 THE COURT: Stay close. I expect we will have a note
16 both about the foreperson very soon and soon enough asking for
17 certain exhibits. Mr. Smallman will alert me as soon as we
18 have any notes. All right. Thank you. I will see you all
19 soon.

20 (Time noted 12:07 p.m.; jury not present)

21 THE COURT: All right. Welcome back, everyone. We
22 have two notes from the jury. The first, which Mr. Smallman
23 has marked as jury note 1, reads "Foreman," and then it gives
24 the name of the person we understand to be Juror 2. And then
25 Juror Note 2 simply reads "Exhibits," and then it lists a

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1 number of exhibits. I am going to read them out slowly, and
2 then counsel will let me know whether there are any special
3 complications with respect to any of them. Here they are in
4 the order as listed: 113, 114, 147, 201, 202, 409C, 441, 442
5 and 443." Then it says "all 700 series" and then it says "D2".

6 Now, all of those except for 113 are recognizable to
7 me as a short documentary exhibit. Is 113 an electronic
8 document?

9 MR. BHATIA: Yes, it's the electronic spreadsheet.

10 THE COURT: So is the right answer then to promptly
11 pull together a set for each of the other exhibits of three,
12 let us say, I will have them up here, and I will bring the jury
13 in and you will put up on the screen 113, and I will explain to
14 them that that is accessible only electronically, but that the
15 others Mr. Smallman will be handing them? Is that the right
16 way to do this?

17 MR. BHATIA: Your Honor, we have prepared the sets of
18 three for the hard copy exhibits and those can go back. For
19 113 we have a laptop that's available that is clean and it
20 can't access the Internet that we can send back with 113 on it.

21 THE COURT: You've got a clean laptop that has nothing
22 on it except for 113?

23 MR. BHATIA: That's right.

24 THE COURT: How did you manage that?

25 MR. BHATIA: We had prepared for the possibility of

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1 sending back --

2 THE COURT: Right. But I want to make sure if we're
3 sending them a laptop it's tailored only to the exhibit that
4 they have requested that can't be accessed in hard copy. So it
5 only has one 113 on it?

6 MR. BHATIA: One moment. I think it only has 113, but
7 let me talk to Mr. Magliocco for a moment.

8 THE COURT: Yes, thank you.

9 MR. BHATIA: Your Honor, so there is no content on
10 this laptop. 113 is actually on a disk, and we have provided
11 the disk in the laptop, and it can't access anything.

12 THE COURT: So, in other words, they can play with it
13 in the jury room without having to come out to court each time
14 they want to look at it.

15 MR. BHATIA: That's right.

16 THE COURT: Have you shown the laptop yet to the
17 defense?

18 MR. BHATIA: We have not, your Honor.

19 THE COURT: Do you have the other exhibits handy?

20 MR. BHATIA: We do.

21 THE COURT: Why don't we take a five minute recess.
22 Why don't you do a show-and-tell with the defense, because
23 before I send back the laptop, I want to make sure they have
24 seen the disk, seen the laptop, have confirmed comfortably
25 themselves that there is no risk of any mischief or something

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1 like that. I just want to do a double check. Assuming that
2 that works, defense counsel, is that a workable approach from
3 your perspective?

4 MR. GELFAND: Yes.

5 THE COURT: I will be back in five minutes. Have a
6 folder for me with triplicate. In other words, have a set of
7 three of each of the others ones, and have shown the defense
8 the laptop and the disk's operation, and give me a few words
9 that I can use when I bring the jury out.

10 Ordinarily, I wouldn't bring the jury out to hand them
11 exhibits, but because there is a laptop, I want to be careful
12 and take a moment to explain what is going on, so give me a few
13 words I can use to make sure that I've adequately explained
14 what they need to do to operate it. Thank you. I'll be back
15 in five minutes.

16 (Recess)

17 THE COURT: All right. Defense, have you had a chance
18 to look at the laptop?

19 MR. GELFAND: We have, your Honor. And the laptop is
20 not clean. It has a number of files; it has and audio MP3
21 file; it has references to other files that appear to either be
22 unable to be opened or perhaps need some other opening. So, we
23 are not comfortable with that laptop.

24 THE COURT: Government, is that correct?

25 MR. BHATIA: Your Honor, we have removed all the

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1 references to the other files, and there is no audio file on
2 the drive anymore. We were going to show it to defense
3 counsel.

4 THE COURT: Why don't you show it as amended to
5 defense counsel.

6 (Pause)

7 MR. GELFAND: Unless I'm misunderstanding, apparently
8 it's not removed.

9 THE COURT: All right. I don't want to waste the
10 jury's time while we're fixing this. It seems to me that it
11 probably makes the most sense to bring them out here and to put
12 up 113 on the screen for now and hand them the other exhibits
13 and, if there is a renewed request for it, tell them that we
14 can try to arrange to have a laptop that is cleared of
15 everything but that. At least that way they will get a prompt
16 answer from us.

17 MR. BHATIA: That's right. And in the interim we will
18 get a laptop in case they have that request.

19 THE COURT: I think that will be all to the good.
20 Have you reviewed together the copies of these other exhibits,
21 and can you hand those up to me?

22 Government counsel, can Exhibit 113 be printed out?
23 Is there some reason it's incapable of being printed out?

24 MR. BHATIA: It's too voluminous lengthwise, so if you
25 print out one part of it, you can't see the other part of it.

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1 THE COURT: Let me ask you as to the hard copies --
2 these are not in any order right now -- have you reviewed these
3 with the defense?

4 MR. BHATIA: I have reviewed them. I don't know if
5 defense counsel has.

6 THE COURT: Counsel, for obvious reasons, before I
7 send something to the jury I want each side to sign off on it
8 to make sure it is what the jury has requested. You have not
9 shown this to the defense, correct?

10 All right. Show this to the defense. Let's get it in
11 the order that the jury requested it, so there is no question
12 that the sorting is out of whack. Once it's been blessed by
13 the defense, I will bring in the jury.

14 All right. Have both sides looked at the printouts of
15 three copies of all exhibits other than 113?

16 MR. BHATIA: Yes, your Honor.

17 MR. DIRUZZO: Yes.

18 THE COURT: And those are fine going to the jury?

19 MR. BHATIA: Yes.

20 MR. DIRUZZO: Yes.

21 THE COURT: I will have Mr. Smallman bring out the
22 jury. When I call on Mr. Magliocco, I will ask you to bring up
23 Exhibit 113. I will explain it is by its nature not something
24 that reduces to a hard copy; they should look at it here and if
25 they want a further look at it we can arrange for a clean

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1 laptop to be sent in.

2 Anything else anyone wants me to say to the jury?

3 MR. GELFAND: Just a question I have is just why 113
4 can't be printed? I mean Excel can be printed wide.

5 THE COURT: Mr. Bhatia?

6 MR. BHATIA: We tried to print it out, your Honor, and
7 when we tried to print it out it affected the way the
8 spreadsheet looked. Columns would get wider or smaller, they
9 would get longer. We can try again, your Honor.

10 THE COURT: Why don't you try. For the time being I
11 will proceed in this fashion, but it hadn't at least appeared
12 to me to be on a scale that made it inherently unworkable.

13 Why don't you keep trying, but for the time being we
14 will bring in the jury. But once the jury is gone, let's try
15 on two tracks to assist their review, both the clean laptop
16 track and to defense counsel's point see if we can get a
17 printout.

18 Mr. Smallman, let's get the jury.

19 (Jury present; time noted 12:27 p.m.)

20 THE COURT: Welcome back, ladies and gentlemen.
21 Please be seated. I have received your first two notes, the
22 first of which tells me that Juror 2 is your foreperson, the
23 second of which seeks certain exhibits.

24 With the exception of one exhibit, we're going to be
25 giving them to you in this folder. There are three copies of

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1 each of the exhibits you have sought. The reason I bought you
2 out is that one of the exhibits, 113, at least at this point we
3 have not found a way to reproduce it in a hard paper copy.
4 It's a spreadsheet. For the time being what we are going to do
5 it put it up on the screen so you can look at it on the screen.
6 If we get a note from you indicating you want to look at it in
7 a different way in the jury room, we are in the process of
8 getting a clean laptop and a disk, and you would then be able
9 to review it in the jury room on a clean laptop and a disk. I
10 will wait to see if you so request, and if that's the case, we
11 will get it to you as soon as we possibly can in that format,
12 but I wanted to explain to you that that is what is going on.
13 In a moment Mr. Smallman will hand you this binder.

14 But for the time being though, Mr. Magliocco, would
15 you kindly put Exhibit 113 up on the jury screen.

16 Now, counsel, this is an Excel document.
17 Mr. Magliocco, could you just slowly page down to the next
18 page. Keep going. Why don't you stop there for a moment.

19 Why don't you, Mr. Magliocco, go do that again. I
20 want the jury to see the full extent of the document. I will
21 wait at that point for a jury note whether or not you need this
22 on a laptop or not, but I want the jury just to see the full
23 extent of the document. Go ahead, Mr. Magliocco.

24 All right, I think I have seen enough to note that
25 this is a long document.

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1 Ladies and gentlemen, I don't want to have an
2 interaction with you; I'd prefer to do it in writing.

3 So, go back to the jury room. If you want this on a
4 laptop, we will be as responsive as we possibly can. I will
5 also look into whether there is some way of getting this data
6 prepared for you in a hard copy, but counsel advise me that may
7 be a hard ask. So, it may be that the way you wind up
8 reviewing this is through a laptop and disk, in which case Mr.
9 Smallman will get it to you as soon as possible.

10 Mr. Smallman is handing you the binder. Why don't you
11 return to the jury room. Thank you.

12 (Jury resumes deliberations at 11:31 a.m.)

13 THE COURT: It seems to me close to an inevitability
14 we're going to get a request for the laptop. It became clear
15 as Mr. Magliocco began to scroll through the document that it's
16 a long spreadsheet and it was not particularly workable to ask
17 them en masse to be scanning it in court. There is a lot of
18 small print, and it appears to go on for many, many different
19 lines.

20 So, government, let's really jump on the process of
21 getting a clean laptop with the disk and making sure the
22 defense is fine with it so that as soon as they ask I can take
23 a look at it and we can send it in.

24 MR. BHATIA: We will, your Honor. And upon looking at
25 the spreadsheet, I recall there are tabs along the bottom, and

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1 if we printed this in hard copy they wouldn't be able to see
2 the tab numbers, so I think the only way to really respond to
3 this request is through the laptop.

4 THE COURT: I'm all for doing it through the laptop.
5 You may be right that there are enough tabs that it would be
6 hard to print it out. It's not inconceivable that if the
7 number of tabs is modest one could have a printout per tab. In
8 any event, I would prefer if you tried to pursue this both
9 ways, but the laptop is apparently going to be the first one to
10 achieve success, so let me know as soon as that's ready.

11 MR. BHATIA: We will.

12 THE COURT: Thank you.

13 MR. DIRUZZO: Your Honor, just so it's clear, I want
14 to make sure that the mode of the Excel file is protected so
15 that it can't be altered or changed by the members of the jury.
16 Because I use Excel a lot, and it's very easy to go in there
17 and accidentally mess up a formula, delete something when
18 you're not paying attention, and the next thing you know the
19 problem cascades throughout the entire Excel file.

20 THE COURT: I took as a given that that would be so,
21 but, government, you obviously should check that. I want to be
22 sure that we have functionality that doesn't exceed that which
23 was used in the case of the trial or that's necessary to
24 meaningfully review this.

25 MR. BHATIA: Your Honor, let me speak to defense

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1 counsel more about this. I think we want to provide them the
2 file as we got it, as it's marked on the disk. I'm not sure
3 about adding extra protections on cells that wouldn't let them
4 be altered. I think it should be sent to them on the disk as
5 it was received into evidence.

6 THE COURT: Does the disk -- what is important is that
7 the jury get the information that appears on the front of this
8 document or by clicking separate tabs. It doesn't appear that
9 mathematical or sorting exercises are needed here.

10 I'm not going to resolve an abstraction. Mr. DiRuzzo,
11 you should take a look at the laptop with the disk and let me
12 know if there is some functionality there that interferes --
13 that presents some problem. If the parties can't solve it, I
14 will determine whether that's an issue. OK? It makes no sense
15 for me to resolve an abstraction.

16 MR. DIRUZZO: OK.

17 THE COURT: Very good. So operating on the assumption
18 that we're likely to get a request, let's solve this problem
19 pronto; and as soon as we get a request, I will come back down.
20 Thank you.

21 (Time noted 12:36, jury not present)

22 THE COURT: We have jury note 3 which reads "No
23 laptop. Thank you." So, man of few words.

24 So I think Mr. Magliocco can probably stand down.
25 Good news. All right. Thank you.

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1 Counsel, at 1:15 I will be taking a guilty plea here.
2 I will need to take up some preliminary business with counsel,
3 but eventually I will bring out the parties there. All I will
4 need is about half of each table kept clear so that I can take
5 charge of that. So just be mindful at 1:15 I will need a
6 little bit of free space here. Thank you.

7 MR. DIRUZZO: And, your Honor, while the jury is
8 deliberating, does counsel get like a set amount of time where
9 like if we're down at the cafeteria mid meal that we're excused
10 from coming up, so to speak?

11 THE COURT: I need somebody here at all times. I'm
12 happy for the others to go and eat. Frankly, I'm OK with you
13 bringing food into the courtroom as long as you conceal it from
14 the jury coming out. Just when the jury comes out, hide your
15 food. I think that's your main way to deal with this problem.

16 (jury not present; time noted 1:20 p.m.)

17 THE COURT: All right. So in United States v. Teman,
18 we have had two more notes. One of them was from an
19 unidentified juror simply asking "Can we step out for lunch?
20 Outside of the building?" And I had Mr. Smallman convey
21 through the marshals regrettably no.

22 More important, we have the following note, jury note
23 5. It reads "Exhibits" and then it lists the following five:
24 409, 409A, 409B, 413 and 431.

25 Counsel, I take it all of those are capable of being

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1 reproduced in triplicate?

2 MR. BHATIA: That's right, we have them right here:
3 Defense counsel is reviewing them.

4 THE COURT: Why don't you review them. One counsel
5 have signed off, I will give them to Mr. Smallman and then we
6 can move from this proceeding and move to the other proceeding
7 in this courtroom.

8 MR. GELFAND: We have had an opportunity to review
9 them. We are satisfied that what is here is responsive to the
10 note.

11 THE COURT: Let me just take a look at them.

12 All right, very good. Since all counsel are
13 satisfied, I will let Mr. Smallman give this to the marshal.
14 Thank you. We are adjourned now in United States v. Teman.

15 (Time noted 3:42; jury not present)

16 THE COURT: Counsel, we have received a note that we
17 marked as jury note 6. It simply reads "Transcript for Joseph
18 Soleimani testimony, Ariel Reinitz."

19 I interpret that as meaning the entirety of the
20 transcript for both the Soleimani trial testimony and the
21 Reinitz trial testimony. Anyone disagree that that's clearly
22 what they're seeking?

23 MR. DIRUZZO: No, your Honor, that sounds right.

24 MR. GELFAND: No, your Honor.

25 THE COURT: What is easier about this is, of course,

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1 there are no subject matter limitations, it's just lock, stock
2 and barrel the testimony. In that respect it makes the process
3 of extract can the testimony easier. However, I want to make
4 sure as you embark on this, we have an understanding on ground
5 rules with respect to sustained objections, which is to say
6 that where an objection was sustained -- you know, I don't know
7 whether the witness then popped off with an answer or something
8 like that -- we should be excluding the objected to question
9 and the court ruling. And where I have granted a motion to
10 strike or to disregard, obviously you need to be sensitive to
11 that. So just as you're going through the transcript, in
12 addition of course to colloquies at the side bar, you should be
13 getting rid of sustained objections and the questions to which
14 they relate as well as the testimony that I've struck.

15 It would be my inclination to have at least three
16 copies, let us say, of each of the proposed transcripts so that
17 they can share them around the jury room.

18 My inclination would be to bring the jury out when we
19 have these ready so that I can instruct them that
20 notwithstanding the fact that they have sought this testimony,
21 they shouldn't be undue weight on the testimony merely because
22 they have it as opposed to the balance of it in the jury room.

23 Anyone object to my doing that?

24 MR. BHATIA: That's fine.

25 MR. GELFAND: That's fine.

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1 THE COURT: Counsel, you have the transcripts here.
2 Get to work. I'm hopeful that given the breadth of the request
3 there actually won't be any objections among you as to the
4 blocking and tackling, but let Mr. Smallman know as soon as you
5 have reached agreement or as soon as you've identified areas of
6 disagreement so I can come down and promptly resolve disputes
7 or bless your outcome so we can get this done promptly.

8 Something you wanted to raise?

9 MR. IMPERATORE: Your Honor, I just wanted to raise a
10 question. There were instances during the testimony where a
11 witness would give an answer and your Honor might have
12 admonished the witness that the answer was either not
13 responsive to the question or something along those lines.
14 Those are technically not sustained objections. What is your
15 Honor's practice?

16 THE COURT: Well, if I wasn't asked to strike the
17 answer, it's still part of the record. Of course the jury
18 heard my colloquy with the witness, so I think we keep that in.
19 It's really only where I have sustained an objection -- in
20 which case it's legally as if the event didn't happen -- or
21 where I've actually struck something where you should be
22 redacting. OK? Does that answer your request he?

23 MR. BHATIA: Yes.

24 MR. IMPERATORE: Yes. Thank you.

25 THE COURT: I will wait to hear from you.

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(Time noted 4:37; jury not present)

THE COURT: All right. Counsel, I have been handed a copy of Soleimani. I take it this is your agreed-upon review of Soleimani?

MR. BHATIA: Yes, your Honor.

MR. GELFAND: Yes, your Honor.

THE COURT: And no disputes?

MR. GELFAND: No disputes.

THE COURT: Wonderful. I will flip through it, and I understand Mr. Magliocco is en route with the other one?

MR. BHATIA: That's correct.

THE COURT: All right.

Were you able to resolve Reinitz also without any disputes on how to apply redactions?

MR. BHATIA: Yes, your Honor.

THE COURT: Great news. Thank you. As soon as we get the Reinitz one, I will review it and we will get the jury.

(Pause)

MR. IMPERATORE: We defer to you, but it's 4:40, if the Court wants to bring them out, we will have the other transcript ready and deliver it as soon as possible.

THE COURT: Unless anyone disagrees, I'm inclined to bring the jury out, so at least they know where's working hard on their behalf.

Mr. Smallman, let's bring in the jury.

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1 We have just gotten jury note 7, which reads "Can we
2 please resume tomorrow?"

3 THE COURT: So let me bring them out, and I will tell
4 them what we have and explain it will be available for them
5 first thing tomorrow.

6 OK. Let's go get the jury.

7 (Jury present; time noted 4:45 p.m.)

8 THE COURT: All right, welcome back, ladies and
9 gentlemen. Be seated.

10 I have received two notes which I want to respond to
11 of yours. The first one is your note of a little while ago
12 that reads "Transcript for Joseph Soleimani testimony, Ariel
13 Reinitz" which I understood to be his testimony as well. I was
14 just about to bring you these when I got your next note which
15 reads "Can we please resume tomorrow?" The answer of course is
16 yes.

17 I want to tell you about these transcripts. As you
18 can tell, it takes a little bit of time because it requires
19 going through on a computer the entirety essentially of the
20 witness's testimony to isolate the portions that are properly
21 given to you. Sustained objections, items I have asked to be
22 stricken, we have redacted. Just because of computer
23 functionality, the redactions in the Soleimani testimony are
24 made with black bars and with respect to the Reinitz it's
25 whited out, but it's the same effect.

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1 In any event, counsel worked hard to review the
2 transcripts, and I have just received them printed out in
3 triplicate. So, I will give these to you to be brought back
4 into the jury room.

5 There is one instruction I do need to give you in
6 connection with the review of transcripts, which is, simply
7 because you happen to have those transcripts, there is a
8 natural human risk that you would attach greater weight to the
9 copies of the transcripts you happen to have as opposed to the
10 other ones, the rest of the testimony in the case that you
11 heard. I just want to make sure you guard against that. The
12 mere fact that you have happened to ask for that testimony
13 should not lead you to give it outsized importance. You should
14 consider all of the testimony of the trial in reaching your
15 verdict.

16 So, what I will do is I will have Mr. Smallman give
17 that to you. I understand right now it's quarter of five, and
18 you would like to break -- just nod. I take it you would like
19 to break now instead of 5 o'clock. Happy to grant that.

20 Mr. Smallman will give this to your foreman. When you
21 all get here tomorrow at 9:30, once you are all here we will
22 bring you out and you can get started.

23 Please don't start deliberating until I have brought
24 you out into the courtroom. Remember, we need you all here, so
25 if anybody is late tomorrow we won't be able to begin -- the

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1 jury won't be able to begin deliberating, so all the more
2 important for everybody to be here on time.

3 As always, breakfast will be served at 8:45, but I
4 need you at 9:30. And remember we will again be serving you
5 lunch tomorrow in the event you are still deliberating as of
6 the lunch break. So Mr. Smallman will have you complete lunch
7 menu orders in the morning.

8 As always, have a good evening. I remind you do not
9 discuss the case. Notwithstanding the fact that you can
10 discuss it as a group of 12 when you're all together in the
11 jury room, you can't otherwise discuss or research the case.
12 Have a safe trip home. I will see you tomorrow morning.

13 (Jury retires for the evening)

14 THE COURT: Counsel, I take it no one has anything to
15 raise. You are all free to leave. I will need somebody here
16 at 9 o'clock in the remote event that there is some issue to
17 raise, although I really doubt it, and at 9:30 I will need you
18 here when I bring out the jury to resume their deliberations.

19 Fair warning, I have a three defendant criminal
20 conference tomorrow -- four defendant criminal conference --
21 tomorrow at 10:30 in one of the ceremonial courtrooms
22 downstairs. I will be bouncing back and forth. I will give
23 this my priority in the event there is a note or something I
24 need to attend to. I will bounce upstairs as quickly as I can,
25 but just as fair warning, there may be a little more delay in

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1 my responsiveness than I ordinarily like just because of that
2 conference.

3 Have a good evening. I will see you tomorrow.

4 (Trial adjourned to January 29, 2020 at 9 a.m.)
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